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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/644,380	08/23/2000	Floyd H. Chilton		1698

21586 7590 02/21/2003

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EXAMINER

JIANG, SHAOJIA A

ART UNIT	PAPER NUMBER
1617	

DATE MAILED: 02/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/644,380	CHILTON, FLOYD H.
	Examiner Shaojia A. Jiang	Art Unit 1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 February 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a)  The period for reply expires 3 months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2.  The proposed amendment(s) will not be entered because:
  - (a)  they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  they raise the issue of new matter (see Note below);
  - (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5.  The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7.  For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

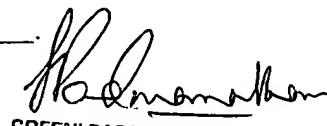
Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 1-46 and 49-51.

Claim(s) withdrawn from consideration: none.

8.  The proposed drawing correction filed on \_\_\_\_\_ is a) approved or b) disapproved by the Examiner.
9.  Note the attached Information Disclosure Statement(s)( PTO-1449) Paper No(s). \_\_\_\_\_.
10.  Other: \_\_\_\_\_.

  
SREENI PADMANABHAN  
PRIMARY EXAMINER  
2/19/03

***Advisory Action***

This Office Action is a response to Applicant's amendment and response after FINAL filed on February 6, 2003. Currently, claims 1-46 and 49-51 are pending in this application.

5. Applicant's remarks filed February 6, 2003 with respect to the rejection of claims 1, 3, 5, 16-17, and 19-22 made under 35 U.S.C. 102(b) as being anticipated by DeMichele et al. (5,223,285) have been fully considered but are unpersuasive for reasons of record stated in the Final Office Action dated December 4, 2002.

Applicant's remarks filed February 6, 2003 with respect to the rejection of claims 2, 4, 6-15, 18, 23-46, and 49-51 made under 35 U.S.C. 103(a) as being unpatentable over DeMichele et al. (5,223,285) have been fully considered but are unpersuasive for reasons of record stated in the Final Office Action dated December 4, 2002.

Contrary to Applicant's assertion that "No composition described in the '285 patent has the claimed unsaturated fatty acid portion", DeMichele et al. clearly discloses a composition or a liquid nutritional product comprising  $\gamma$ -linolenic acid, eicosapentaenic acid, stearidonic acid, and an antioxidant such as beta-carotene, vitamin E, vitamin C, selenium, and taurine, as discussed in the previous Office Action. Applicant's arguments regarding to other unsaturated fatty acids in the DeMichele's composition have been considered but are not found persuasive, since the transitional phrases "comprising" recited in the instant claimed composition is inclusive or open-ended and

does not exclude additional, unrecited elements or method steps. See, e.g., Genentech, Inc. v. Chiron Corp., 112 F.3d 495, 501, 42 USPQ2d 1608, 1613 (Fed. Cir. 1997).

As discussed in the Final Rejection, said claims 1, 3, 5, 16-17, and 19-22 are properly rejected under 35 U.S.C. 102(b) and claims 2, 4, 6-15, 18, 23-46, and 49-51 are properly rejected under 35 U.S.C. 103(a) in view of the prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Jiang, whose telephone number is (703) 305-1008. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, Ph.D., can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1235.

S. A. Jiang, Ph.D.

Patent Examiner, AU 1617

February 19, 2003